

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1280

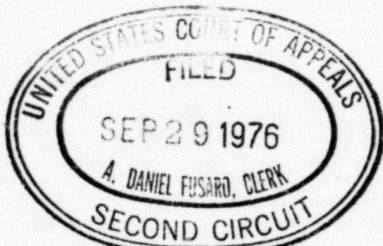
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
DOCKET NO. 76-1280

UNITED STATES OF AMERICA,  
Appellee,  
-against-  
JOSE GABRIEL VELEZ-DIAZ,  
Appellant.

B  
P/  
15

ON THE APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX



BERNARD J. FRIED,  
STANLEY MARCUS,  
ELIA WEINBACH,  
Assistant United States Attorneys,  
Of Counsel

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA,

- against -

INDICTMENT 75CR.141

JOSE GABRIEL VELEZ - DIAZ,

Defendant.  
----- X

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of JOSE GABRIEL VELEZ-DIAZ, sworn to the <sup>24</sup>17th day of April 1975, and upon the annexed copy of the indictment, and upon all of the proceedings and papers filed herein, the undersigned, as attorney for the above named defendant, will move this Court before the HON. JACOB MISCHLER, District Judge of this Court to be held in his part, at the Eastern District Courthouse, located at 225 Cadman Plaza, Brooklyn, New York, on the <sup>24</sup>2 day of <sup>May</sup>April 1975, at 9.30 A. M., in the forenoon of that day or as soon thereafter as counsel can be heard for an Order of this Court dismissing the within indictment, because of the rights of the defendant being prejudiced by failure of the government to afford the defendant a speedy trial, and for such other and further and different relief as to the Court in the premises may seem just and proper.

Dated. New York, N.Y.  
April 24th 1975.  
24

Yours etc.,

IRVING KATCHER  
Attorney for Defendant  
38 Park Row, New York, NY.  
(212) Ba. 7-0073.

TO:  
UNITED STATES ATTORNEY  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

INDICTMENT # 75 CR 141

JOSE GABRIEL VELEZ -DIAZ,

A F F I D A V I T.

Defendant.

----- X

STATE OF NEW YORK :  
COUNTY OF NEW YORK : SS: -  
EASTERN DISTRICT :

JOSE GABRIEL VELEZ -DIAZ, being duly sworn  
deposes and says:

That he is the defendant named in the above  
entitled indictment and familiar with all of the facts herein.

Deponent makes this affidavit in support  
of my application to dismiss the indictment found against me  
on the ground that I have been denied the right to a speedy  
trial.

That upon information and belief I was arrested on or about the 14th day of February 1975, and I was thereafter brought before a Magistrate of this Court and bail was fixed in said Court. The matter in which I was arrested allegedly pertained to my Immigration Status. The hearing in the Magistrates Court was adjourned to the 28th day of February 1975, with the direction of the said Magistrate that if no indictment was found by that date, the proceeding would be dismissed. That at the time of my arrest, it was claimed that some narcotic was found, a gun and some amount of funds. This information was conveyed to the Magistrate. When reference was made to an indictment, on the 18th day of February 1975, it was understood that the indictment if any would relate to the alleged narcotics found.

That it appeared that on or about the 27th day of February 1975, an indictment was lodged against me in this Court for a narcotic situation. However, upon examination of the same when I appeared in this Court to plead to the



6  
said indictment with my attorney present, much to my surprise instead of the indictment making reference to the alleged narcotics of February 14, 1975, the indictment referred to a situation which was alleged to have incurred on or about the 7th day of August 1973, within the Eastern District of New York. The plea entered was Not Guilty. Bail was fixed by the HON. JACOB MISHLER, and sometime thereafter bail was posted and at this point in time, I am out on bail.

That I have been informed by my attorney, IRVING KATCHER, Esq., that from information he received from the Assistant United States Attorney, that the claimed transaction was supposed to have taken place at 419 Franklin Avenue, Brooklyn, New York.

I have been informed by my attorney, that the Constitution of the United States, provides that every defendant is entitled to a speedy trial, as mandated by the Sixth Amendment.

I have indicated that I was arrested on or about the 14th day of February, the alleged offense upon which I was indicted not until the 27th day of February 1975, which is claimed to have occurred August 7th 1975. A period of approximately 19 months elapsed since the original date. Nothing from the original date was done in connection with that alleged transaction to protect the rights of the government, by it obtaining an indictment, having it sealed and a warrant issued for my arrest.

That due to the failure of the government to proceed diligently, as it should, instead of waiting for a period of almost 19 months.

That my constitutional rights have been prejudiced by this delay on the part of the government in not obtaining an indictment within a reasonable period of time following the claimed narcotic transaction. I continued to reside at that address for a considerable period of time after August 7, 1973.



That I have been prejudiced by reason of the fact, because of the 19th month period, I cannot recall what, where I was and did on that 7th day of August 1973.

That any and all persons with whom I was familiar with, persons residing at the said premises, and friends with whom I both knew and who also resided in said building and premises have long moved and vacated and their current whereabouts are unknown, some, if not all of these persons whom I might have been able to call and utilize their testimony are not AVAILABLE. I have sought to locate some of the persons whom I knew at that time have left the United States and I have encountered difficulty up to this time in trying to locate them. I, must advise this Court, that I will have great difficulty in establishing a defense.

That no reason has been given for the delay on the part of the prosecution in obtaining the current indictment. Had

the government proceeded quickly, if in truth and fact, I did engage in the act charged in the indictment, I could have been arrested and tried on said charge.

This Court can only arrive at only one conclusion that by reason of all of the above your deponent has not only been deprived of a right to a speedy trial, but and in addition, my rights have been seriously prejudiced by reason of the lapse of time and all witnesses to which I could resort to as to any alleged event of August 7, 1973, are currently not available and reasonable effort to locate persons whom I knew at the said building and premises, are not available.

The offense charged and claimed to have been committed by me is a most serious one and does carry a maximum term of imprisonment of 15 years and possible special probation periods.

My rights have been seriously prejudiced. I have also been informed by my attorney that this Court had adopted a 6 month rule which would afford a defendant a speedy trial and would not have caused him any prejudice.

That attached hereto and made a part of this application is a copy of the said indictment.

In view of all of the aforesaid, deponent respectfully urges that this Court enter its order dismissing the indictment found on the 27th day of February 1975. That no previous application for this relief has been made to this or any other Court.

Deponent prays for the granting of the within application.

Sworn to before me this

24<sup>th</sup> day of April 1975.

IRVING KATCHER  
Notary Public, State of New York  
No. 31-7171500  
Qualified in New York County  
Commission Expires March 30, 1976

Jose Gabriel Velez-Dia  
JOSE GABRIEL VELEZ-DIA



JD:JOB:sj  
# 751,250

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

- against -

JOSE GABRIEL VELEZ-DIAZ,

Defendant.  
----- X

*ms. J.*  
Cr. No. 75 CP 141  
(T. 21, U.S.C., §341(3)(1))

2-27-75

THE GRAND JURY CHARGES:

On or about the 7th day of August 1973, within the Eastern District of New York, the defendant JOSE GABRIEL VELEZ-DIAZ did knowingly and intentionally distribute approximately 34.39 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1).)

A TRUE BILL.

\_\_\_\_\_  
FOREMAN.

\_\_\_\_\_  
UNITED STATES ATTORNEY

*419 Franklin  
apt. 1*

NOTICE OF ENTRY

Sir:— Please take notice that the within is a (certified)  
true copy of a  
duly entered in the office of the clerk of the within  
named Court on 19

Dated, .

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:— Please take notice that an order

of which the within is a true copy will be presented  
for settlement to the Hon.

one of the judges of the within named Court, at

the day of 19  
at M.  
Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No.

Year 19

UNITED STATES DISTRICT COURT.  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

JOSE GABRIEL BELLEZ-DIAZ

Defendant.

NOTICE OF MOTION, EXHIBIT  
AND AFFIDAVIT.

IRVING KATCHER

Attorney for Defendant

Office and Post Office Address, Telephone

38 Park Row, New York, N.Y. 38

(212) Ba. 7-0073

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----

UNITED STATES OF AMERICA

-against-

JOSE GABRIEL VELEZ-DIAZ,

Defendant.  
-----

75 CR 141

Memorandum of Decision  
and Order

August 11, 1975

MISHLER, CH. J.

Defendant moves to dismiss the indictment because  
of pre-indictment delay.<sup>/1</sup>

Defendant is charged with knowingly and intentionally possessing approximately 34.39 grams of cocaine on August 7, 1973. He was arrested pursuant to a warrant on February 18, 1975, and the indictment was returned on February 27, 1975. The defendant complains that he "cannot recall what, where, I was and did on that 7th day of August, 1973." He also states that he cannot now find

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<sup>/1</sup>The motion initially was to dismiss on the ground that defendant was denied a right to a speedy trial. It was obvious from the supporting affidavit and argument of counsel that the motion was addressed to pre-indictment delay.

friends in the building in which he lived who have since moved and cannot be located and that "some, if not all, of these persons whom I might have been able to call and utilize their testimony are not available."

Defendant has the burden of establishing pre-indictment prejudicial delay, United States v. Smith, 487 F.2d 175, 177 (5th Cir. 1973), Schlinsky v. United States, 379 F.2d 735, 737 (1st Cir. 1967). ". . . [I]t is incumbent upon the accused to demonstrate that the delay has so impaired his capacity to prepare a defense as to amount to . . . a denial of due process . . .," United States v. Capaldo, 402 F.2d 821, 823 (2d Cir. 1968). Defendant's claim that his memory was dimmed and the general claim of possible lost testimony through the delay is not enough. United States v. Foddrell, \_\_\_\_ F.2d \_\_\_\_ (2d Cir. July 28, 1975, Docket No. 75-1048). The defendant has also failed to show that the government's delay was designed to harass or gain tactical advantage through the delay, United States v. Marion, 404 U.S. 307, 313, 92 S.Ct. 455, 459 (1971).

The motion is in all respects denied and it is  
SO ORDERED.

  
\_\_\_\_\_  
U. S. D. J.



UNITED STATES DISTRICT COURT.  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN, NEW YORK 11201

CHAMBERS OF  
JACOB MISHLER  
CHIEF JUDGE

August 11, 1975

Joan O'Brien, Esq.  
Assistant United States Attorney  
Eastern District of New York  
Brooklyn, New York 11201

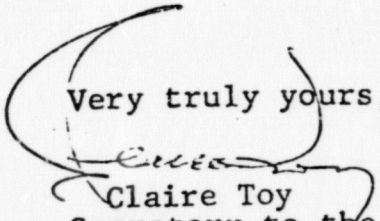
Irving Katcher, Esq.  
38 Park Row  
New York, New York 10038

Re: United States v. Jose Gabriel Velez-Diaz  
Docket No. 75 CR 141

Dear Counselors:

At the direction of the Honorable Jacob  
Mishler, I am forwarding a copy of a memorandum  
of decision and order signed and filed August 11,  
1975 in the above matter.

Very truly yours,

  
Claire Toy  
Secretary to the  
HONORABLE JACOB MISHLER  
Chief Judge

Encl.



1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----X  
5 UNITED STATES OF AMERICA :

6 -against- :

75 CR 141

7 JOSE BABRIEL VELEZ-DIAZ, :

8 Defendant. :  
9 -----X

10  
11 United States Courthouse  
12 Brooklyn, New York

13 January 26th, 1976  
14 3:00 P.M.

15 B e f o r e:

16 HONORABLE JACOB MISHLER,

17 U.S.D.J.  
18  
19  
20  
21  
22  
23  
24  
25

ROBERT BRADLEY  
ACTING OFFICIAL COURT REPORTER

1  
2 **Appearances:**

3 DAVID G. TRAGER, Esq.  
4 United States Attorney for the  
5 Eastern District of New York

6 By: ELIA WEINBACK, Esq.  
7 Assistant United States Attorney

8 IRVING KATCHER, Esq.  
9 Attorney for Defendant  
10  
11  
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1 THE CLERK: The United States versus Jose Gabriel  
2 Velez-Diaz.

3 MR. WEINBACK: The defendant is here, but Mr. Katcher  
4 is not.

5 THE COURT: Mr. Katcher asked to adjourn the picking  
6 of the jury until tomorrow. I told him I couldn't that. The  
7 jury is in today and I will pick a jury today. He said he  
8 had a matter with the Immigration at West Broadway. And he  
9 assured me that the would be here by 3:00 o'clock. I suppose  
10 he is delayed. As soon as he get here I will start picking  
11 the jury.

12 May I have the file?

13 THE CLERK: Yes, Judge.

14 MR. WEINBACK: Mr. Katcher is here, Your Honor.

15 THE COURT: I want to pick the jury in the adjoining  
16 Courtroom.

17 MR. WEINBACK: Before we pick a jury perhaps we might  
18 get a few administrative details out of the way.

19 THE COURT: All right. Mr. Katcher, would you  
20 please come up?

21 MR. KATCHER: Yes, Your Honor.

22 (Whereupon, Counsel and the court reporter conferred  
23 with the Court at Bench as follows:)

24 THE COURT: Mr. Weinback has some administrative  
25 matters.

1 MR. WEINBACK: At this time I would like to advise Mr.  
2 Katcher that the informant was present during the trans-  
3 action which is the basis of the indictment. The informant  
4 was sought after for several weeks. He called me about  
5 ten minutes ago and he is coming to my office, and I will  
6 make him available to Mr. Katcher. His name is James  
7 Thomas and he will be here within the hour.

8 I have a few Documents I would like to turn  
9 over to you, but I will wait until Martin gets back.

10 THE COURT: All right. You have got some  
11 3500 materials?

12 MR. KATCHER: Yes.

13 THE COURT: How long will it take to try this  
14 case?

15 MR. WEINBACK: I believe it will take in the  
16 direct case about two hours -- two and a half hours.

17 THE COURT: Tell the jurors to go to Judge  
18 Bartels' Courtroom.

19 MR. WEINBACK: Government Exhibit 3500-1 is  
20 the Grand Jury minutes of Horace D. Balmer dated 2-27-  
21 '75, consisting on five pages.

22 THE CLERK: So marked as Government Exhibit  
23 3500-1.

24 (Marked)

25 MR. WEINBACK: Government Exhibit 3500-2 is



1 a two page report of Detective Horace Palmer dated  
2 August 13th, 1973.

3 THE COURT: Did you say August, '73?

4 MR. WEINBACK: August 13th, 1973.

5 THE CLERK: So marked as Government Exhibit  
6 3500-2.

7 (Marked)

8 MR. WEINBACK: Government Exhibit 3500-3 is  
9 a two page report of Police Officer John Heckmann dated  
10 August 8th, 1973.

11 THE CLERK: So marked as Government Exhibit  
12 3500-3.

13 (Marked)

14 MR. WEINBACK: Government Exhibit 3500-4 is  
15 a one page report of Detective Horace Balmer dated November  
16 16th, 1973.

17 THE CLERK: So marked as Government Exhibit  
18 3500-4.

19 (Marked)

20 MR. WEINBACK: Government Exhibit 3500-5 is a  
21 two page report of Police Officer John Heckmann dated  
22 November 16th, 1973.

23 THE CLERK: So marked as Government Exhibit  
24 3500-5.

25 (Marked)

1 MR. WEINBACK: Government Exhibit 3500-6 is a  
2 six page document consisting of the reports of Police  
3 Officer John Heckmann dated March 25th, 1974, June 14th,  
4 1974, September 13th, 1974, December 11th, 1974, and  
5 January 28th, 1975. For the record, the last page of  
6 3500-6 is a report of Special Agent Checkoway.

7 THE CLERK: So marked as Government Exhibit  
8 3500-6.

9 (Marked)

10 THE COURT: Gentlemen, we will proceed to Judge  
11 Bartel's Courtroom.

12 MR. KATCHER: Your Honor, I have some prelimi-  
13 nary motions.

14 THE COURT: What are they?

15 MR. KATCHER: If Your Honor recalls about a  
16 month ago, or approximately six week ago Your Honor  
17 adjourned this case on the basis of the information which  
18 was given to me by Mr. Weinback as to the presence of a  
19 black man on September 13th, 1973.

20 MR. WEINBACK: The date of the transaction is  
21 August 7th, 1973.

22 MR. KATCHER: And I had indicated to Your  
23 Honor that if I had this information-- or had this in-  
24 formation been given myself several weeks prior to the  
25 date it appeared on the calender, this was a request



1 made to locate this black man. Your Honor might recall  
2 I told you that I had gone over, after I got the in-  
3 formation from Mr. Weinback, together with the defendant  
4 several areas in Brooklyn where this man had either hung  
5 out or resided. And then from there we went to an area  
6 in Corona in Queens, I think 99th or 102nd Street be-  
7 tween Roosevelt Avenue and Nothern Boulevard looking  
8 for him. I thought we had got a lead as to the possible  
9 existance in that particular area.

10 Since the time I was before Your Honor, and  
11 your Honor did grant the adjournment with the thought  
12 in mind that I might be able to locate this black man  
13 who claims to have been in the apartment, according to  
14 the information given to me.

15 I must have spent a day in total hours together  
16 with my client Mr. Velez-Diaz all over that area in  
17 Corona and again in Brooklyn, New York trying to locate  
18 him.

19 He has been seen in that area from information  
20 given by people giving a description of this individual.  
21 Unfortunately neither my client nor I know the man.

22 Of course I would go with my client together  
23 with a person spoke Spanish and English so that the  
24 problem of Spanish and English would not be a factor, but  
25 all to no avail.

1                                   The Motion I am making, Your Honor,  
2 is to dismiss the indictment on the ground of the failure  
3 to locate this witness. The information was only given  
4 to me a few weeks -- lets say approximately two months  
5 ago. And the failure to locate this witness is prejudicial  
6 to the rights of my client.

7                                   And Your Honor must recall in this particular  
8 case the arrest in this case occurred in 1975, almost  
9 eighteen months after the alleged single sale in September,  
10 September 13th, 1973. And the time factor became a very  
11 important one insofar as the defendant seeking witnesses  
12 who would be in a position to support his contention  
13 on the basis of his plea of not guilty that no violation  
14 of the Federal Statute occurred.

15                                  And at this point and time I sincerely move to  
16 dismiss the indictment.

17                                  You Honor might recall also that I had previously  
18 made a Motion back in 1975, shortly after the defendant  
19 was indicted, which was returnable before Your Honor on  
20 the 2nd day of May, 1975, in which application Your Honor  
21 rendered a memoranda decision in order classifying my  
22 Motion rather than dismissing it on the ground that the  
23 defendant was denied a right to a speedy trial. And in  
24 actual fact it was a pre-indictment which Your Honor  
correctly classified the application. And Your Honor



1 in a three or four page decision -- actually a two page  
2 memoranda of decision denied that Motion.

3 I renew that Motion as well together, of course,  
4 I think I gave you the name the last time I was here of  
5 the person whom we were seeking. When I say "We were  
6 seeking", we are speaking of the description of him as  
7 a black man which was how he was characterized. And in  
8 the information given to me by Mr. Weinback the name of that  
9 person that we were seeking, Your Honor, is Jose Basom,  
10 B-a-s-o-m.

11 THE COURT: You say you gave that name before?

12 MR. KATCHER: No, I'm not sure on the earlier --

13 THE COURT: It sounds kind of strange to me.

14 MR. WEINBACK: I never heard that name before.

15 MR. KATCHER: I said I wasn't sure, I thought

16 I did.

17 MR. WEINBACK: I certainly never gave that

18 name.

19 MR. KATCHER: No, you didn't. I just want

20 to correct one thing. I said it was 107th Street, and  
21 actually it is 99th Street to 102nd Street in Corona.

22 Your Honor will also recall that when I made  
23 the earlier application for the adjournment, I told  
24 you that we were looking all over Dean Street for this  
25 man, and in that vicinity at that time. And it was in

1 that area that the information was obtained that --

2 THE COURT: What is the fellow's name?

3 MR. KATCHER: Basom. This is the black man.

4 THE COURT: What is his first name?

5 MR. KATCHER: Jose.

6 THE COURT: Who gave you that name?

7 MR. KATCHER: My client.

8 THE COURT: This is the first time you have  
9 ever mentioned that. When was the first time he mentioned  
10 it to you?

11 MR. KATCHER: When I got the information from  
12 Mr. Weinback about two or three weeks before the case  
13 appeared on your calender.

14 THE COURT: And before that he didn't know?

15 MR. KATCHER: No, because before that we knew  
16 that in the Motion papers, Your Honor, we were talking  
17 about the two other people that shared the apartment  
18 with him who disappeared -- when I say "disappeared",  
19 removed from the apartment and their whereabouts were  
20 unknown.

21 THE COURT: What was the relationship between  
22 the Defendant and Jose Basom?

23 MR. KATCHER: He helped him as a painter. He  
24 was helping paint the apartment. And that was the first  
25 time --



1 THE COURT: How long had he known him?

2 MR, KATCHER: For a couple of years.

3 THE COURT: Was he married or singled?

4 MR, KATCHER: No, singled.

5 THE COURT: Where did he live?

6 MR, KATCHER: He lived on Dean Street.

7 THE COURT: Did he know the address?

8 MR, KATCHER: Yes. I went with him to 108  
9 Dean Street. That's where we got the information.

10 THE COURT: What have you got to say about  
11 that?

12 MR, WEINBACK: Well, I think you have already  
13 ruled on the original Motion on the pre-indictment de-  
14 lay.

15 I would point out in the context of this  
16 supposedly black painter who was present at the time  
17 in the apartment at the time the transaction took place,  
18 I took over this case in September, 1975, and the in-  
19 dictment in the case was filed I believe in February,  
20 1975. Since I took over the case at no time ever did  
21 Mr. Katcher ask me for an materials that he would be  
22 entitled to under the Discovery Rule.

23 Under my own initiative on November 5th, 1975,  
24 I handed him the paper which did, in fact, ellude to the  
25 presence of this black man.

1 MR. KATCHER: Right.

2 MR. WEINBACK: I never heard from Mr. Katcher  
3 again concerning the whereabouts of him, or whether he  
4 was making any efforts to locate him until December 8th,  
5 1975, more than a month after the material had been turned  
6 over to him. And at that time Mr. Katcher moved to  
7 adjourn on the basis that he asked to dismiss the indict-  
8 ment.

9 Today I think in view of the concern with which  
10 Mr. Katcher showed in filling the Motion papers that his  
11 client might be prejudiced by the delay. It is incon-  
12 ceivable to me how so much time could have passed with-  
13 out Mr. Katcher approaching his client and asking him  
14 on that aparticular day was anyone else present in that  
15 apartment who might be able to testify in your behalf.

16 THE COURT: What proof have you got that the  
17 Government did harrasse the defendant with the intention  
18 that it prejudiced the defendant in the preparation of  
19 the defense case?

20 MR. KATCHER: May I first respond to Mr. Weinback?

21 THE COURT: Yes.

22 MR. KATCHER: Mr. Weinback is the third Assistant  
23 United States Attorney in this case. The first Assistant  
24 United States Attorney was Ms. O'Brian from whom no in-  
25 formation was gotten.



1 THE COURT: Did you ask?

2 MR. KATCHER: An oral request was made.

3 THE COURT: Did you ever make any formal Motion?

4 MR. KATCHER: No, Sir. I am not mis-stating  
5 the facts, Your Honor. Following the lack of information  
6 being obtained from Ms. O'Brian, she was substituted by  
7 Mr. Freedman --

8 MR. WEINBACK: That is correct, Your Honor.

9 MR. KATCHER: Who also had this matter for a  
10 period of time. I discussed the matter with him also  
11 and an oral Motion which was never decided by Your Honor,  
12 that was Surpression Motion which happened in connection  
13 with the Immigration matter where a gun was found, and  
14 some money was found, and in some area I think a snort  
15 of cocaine. There were four or five people arrested  
16 at that time. And this was found within the apartment  
17 without a search warrant. Mr. Freedman said he was  
18 going to provide a suspect or use any of that material  
19 that was found in the Immigration raid. I asked if he  
20 had any information which would give me any leads because  
21 my client has no recollection of anything happening on  
22 September 13th, 1973. Nothing was furnished to me other  
23 than that -- all we have, we have the agents. Mr.  
24 Weinback --

25 THE COURT: What happened on 9/13/'73, a search --

1 MR. KATCHER: That's when the alleged sale  
2 took place.

3 THE COURT: This says on or about August 7th.

4 MR. KATCHER: I stand correct. Following the  
5 indictment been found against my client. If Your Honor  
6 will recall I made two Motions. And I predicated the  
7 original Motion on the pre-indictment on the basis of the  
8 information which was available. We did not know at any  
9 time until the information was given to me by Mr.  
10 Weinback --

11 THE COURT: When was the last time he saw  
12 this fellow?

13 MR. KATCHER: He saw him this passed summer.

14 THE COURT: This passed summer?

15 MR. KATCHER: Yes.

16 THE COURT: Jose Basom?

17 MR. KATCHER: Yes.

18 THE COURT: Are you sure?

19 MR. KATCHER: I can only tell you what my  
20 client tells me. And, of course, I didn't know of his  
21 existance until the information of the black man --

22 THE COURT: Then this evidence was not lost  
23 because of the pre-indictment delay, because the indict-  
24 ment was February 27th, 1975. If he saw him this passed  
25 summer he was available to him this passed summer.



1 MR. KATCHER: That is true, Your Honor, except  
2 that information about the black man being in the apart-  
3 ment helping him paint was not known until the month of  
4 December, 1975.

5 THE COURT: But that was available. All you  
6 needed to do was to ask. The Motion is denied.

7 MR. KATCHER: I respectfully accept.

8 THE COURT: There was an opportunity under the  
9 rule to move. I don't think that the Government must come for-  
10 ward -- it is nice if they do out of courtesy, but there  
11 are procedures provided for Discovery. I don't think the  
12 Defendant can complain that the evidence was lost be-  
13 cause he failed to proceed when he first realized that  
14 this was evidence that might be helpful to him when Mr.  
15 Weinback volunteered the evidence or information to counsel.

16 MR. KATCHER: Well, why wasn't the information  
17 give to me by Ms. O'Brian who was originally in charged of  
18 the case. And what about Mr. Freedman who was the second  
19 one in charged when I inquired about the information?

20 THE COURT: Cases aren't made or lost on  
21 courtesy.

22 MR. KATCHER: It is not a question of courtesy,  
23 it is a question of giving the defendant what he is  
24 entitled to.

25 THE COURT: That's right. Mr. Katcher, I'm

1. sorry. It is almost ten to four, and I'm going to pick  
2 a jury. I wanted to pick this jury beginning at 2:30.  
3 Now, they are in the next courtroom, and we are going to  
4 start picking a jury, and nothing you can say is going to  
5 change my mind.

6 I think enough is said on the record to in-  
7 dicate that the Government fulfilled its obligations.

8 This is not a question of evidence lost because  
9 of the pre-indictment delay.

10 Suppose Mr. Basom was present here today, you  
11 wouldn't have the Motion, would you?

12 MR. KATCHER: Correct, Your Honor.

13 THE COURT: So, it is nothing that was lost  
14 by the pre-indictment delay. It is something that  
15 happened after the indictment.

16 MR. KATCHER: I disagree with Your Honor for  
17 this reason. When the Motion was made for the pre-indictment  
18 delay, if your Honor recalls you have the original papers  
19 in your files with names of the people, if I recall  
20 correctly, who lived in the apartment and whose names  
21 were furnished to this Court on the Motion either the  
22 written or oral argument who lived and shared that apart-  
23 ment with my client, and who have since 1973 moved from  
24 the apartment. The apartment was vacated. The people  
25 moved to different parts of the earth, and an effort was



1 was made to locate them as described in the Motion papers  
2 which Your Honor denied in the memoranda decision. At that  
3 point and time if Ms. O'Brian who answered the Motion  
4 earlier had advised me or advised Your Honor of the  
5 existence of the black man who was supposed to have been  
6 in the apartment, and who was not either one of the two  
7 people who were occupying the apartment and sharing the  
8 apartment, we would be in a different ball game.

9 THE COURT: Were these people arrested at the  
10 time?

11 MR. KATCHER: No, Sir.

12 THE COURT: When were they arrested?

13 MR. KATCHER: None of these other occupants  
14 were arrested.

15 THE COURT: Who was arrested at the time?

16 MR. KATCHER: My client was the only one.

17 THE COURT: Mr. Weinback?

18 MR. WEINBACK: The defendant was arrested in  
19 February, 1975.

20 THE COURT: Who was arrested at the time of the  
21 sale?

22 MR. WEINBACK: No one.

23 MR. KATCHER: There was no arrest until 18  
24 months after the sale.

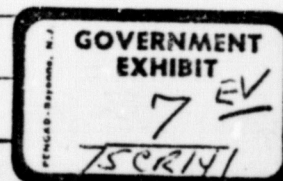
25 THE COURT: Let's pick a jury.

1  
2 (Whereupon there was a jury voir dire which was  
3 recorded but not transcribed herein.)  
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# PERSONAL HISTORY REPORT

<b>1. USED AS: (Check applicable boxes)</b> <input checked="" type="checkbox"/> PERSONAL HISTORY <input type="checkbox"/> G - DEP SUPPLEMENTAL (If known, give Computer assigned ID No.) <input checked="" type="checkbox"/> G - DEP SUBMISSION <input type="checkbox"/> FUGITIVE DECLARATION <input type="checkbox"/> INFORMANT SUBMISSION						<b>2. FILE NUMBER</b> CT-73-0169      Group 7	
<b>5a. NAME (Last, First, Middle; Title ie. Capt., Dr., etc.)</b> VELEZ      Jose      Gabriel						<b>3. IDENTIFIER</b> DG4-C3	
<b>6. ADDRESS (No., Street, City, State, ZIP Code)</b> 110 Nostrand Ave., Brooklyn, New York						<b>4. PHOTO NO.</b> N/A	
<b>8. TELEPHONE NUMBER (Include Area Code)</b> N/A						<b>5b. CHINESE TELEGRAPHIC NAME CODE</b> N/A	
<b>9. DATE OF BIRTH (Mo., Day, Year)</b> 1/6/48						<b>10. PLACE OF BIRTH (City and State)</b> Colombia	
<b>11. CITIZENSHIP</b> Colombia						<b>12. ILLEGAL ALIEN</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>13. NATIONALITY</b> Colombian		<b>14. RACE</b> White		<b>15. SEX</b> <input checked="" type="checkbox"/> M <input type="checkbox"/> F		<b>16. HEIGHT</b> 5'11"	
<b>17. WEIGHT</b> 175		<b>18. EYES</b> Brown		<b>19. HAIR</b> Brown		<b>21. OCCUPATION</b> Crew member of ship	
<b>20. IDENTIFYING CHARACTERISTICS (Scars, Marks, Physical Defects, etc.)</b> N/A						<b>22. DRUG USER</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (If Yes, what Drug)	
<b>23. SOCIAL SECURITY No.</b> 074-52-8677		<b>24. FBI No.</b> N/A		<b>25. DEA REGISTRATION No.</b> N/A		<b>26. OTHER Nos. (Federal, State, Local)</b> INS#A20-808-084	
<b>27. PASSPORT No.</b> K356871		<b>28. VISA APL. No.</b> N/A		<b>29. ISSUING COUNTRY</b> Colombia		<b>30. NAME ON PASSPORT</b> Jose Gabriel Velez-Diaz	
<b>31. DRIVER'S LICENSE</b>						<b>32. VEHICLE REGISTRATION</b>	
<b>a. State or Country</b> N/A		<b>b. Number</b> N/A		<b>c. Expiration Date</b> N/A		<b>a. Make</b> Chrysler	
<b>33. EDUCATION (Level and Name of School)</b> N/A						<b>b. Year of Car</b> 1971	
<b>34. CLASS OF VIOLATOR (Check one)</b> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4						<b>c. License Number</b> 910YNE	
<b>35. CRITERIA</b>						<b>d. Year</b> 1975	
<b>a. Check one</b> <input checked="" type="checkbox"/> DOMESTIC <input type="checkbox"/> FOREIGN						<b>e. State</b> New York	
<b>b. Check one</b> <input checked="" type="checkbox"/> DIRECT EVIDENCE						<b>36. FILE REFERENCES (G - DEP Only)</b>	
<b>37. CRITERIA IDENTIFICATION (Check applicable)</b> <input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f <input type="checkbox"/> g <input type="checkbox"/> h <input type="checkbox"/> i <input type="checkbox"/> j <input type="checkbox"/> k <input checked="" type="checkbox"/> l <input type="checkbox"/> m <input type="checkbox"/> n <input type="checkbox"/> o <input type="checkbox"/> p <input type="checkbox"/> q <input type="checkbox"/> r <input type="checkbox"/> s <input type="checkbox"/> t <input type="checkbox"/> u <input type="checkbox"/> v <input type="checkbox"/> w <input type="checkbox"/> x <input type="checkbox"/> y <input type="checkbox"/> z						<b>38. LOCATIONS OF CRIMINAL ACTIVITY (City, State, Country)</b> Brooklyn, New York	
<b>40. PRIOR CRIMINAL RECORD</b> Unknown						<b>39a. CRIMINAL ASSOCIATES (Last, First, Middle Name)</b> Rengipo-Mosguera, Alfredo	
<b>41a. FAMILY (Last, First, Middle Name)</b>						<b>39b. SOURCE OF SUPPLY (Name)</b> Unknown	
SPOUSE: Unknown							
FATHER: Unknown							
MOTHER: Unknown							
BROTHERS/SISTERS/CHILDREN (Name and Relationship) Unknown							



42. DATE OF ARREST <del>2/14/75</del> 3/12/75		43. TIME OF ARREST 4:00 PM		44. Mark "x" in appropriate block		DEA	USC	INS	O/F	S/L
45. PLACE OF ARREST (City and State) Brooklyn, New York				Arresting Agency		X		X		
				Participating in Arrest		X		X		
				Discovering Agency		X				
				Seizing Agency		X				
46. ARMED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		47. AMOUNT OF FUNDS ON PERSON AT TIME OF ARREST \$ Unknown		Participating in Seizure		X				
48. Released to other agency <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		49. DATE	50. AGENCY		51. TYPE OF VIOLATION (Possession, sale, etc.) Sale 21USC 841(a)(1)					
52. Federal Prosecution authorized <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		53. DATE 2/26/75	54. JUDICIAL DISTRICT Eastern District New York		51a. Principle Drug Violator was Charged With (Heroin, cocaine, etc.) Cocaine					
55. Magistrate Hearing: Bound Over <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		56. DATE 3/12/75	57. BAIL AMOUNT \$25,000		58. BAIL POSTED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		59. PERSONAL RECOGNIZANCE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

60. REMARKS (Refer to Item No. when applicable)

39a) Riasco-Forero, Carlos Numberto  
Renjifo-Mosquera, Hugo  
Silva, Carlos Alberto

42) On 2/14/75 VELEZ was arrested as an illegal alien, 8USC1282, and held on \$5000.00 bail. On 3/12/75 VELEZ was arrested by the N.Y.DEA Task Force and bail was set at \$25,000.00, while still being held as an illegal alien.

34) On August 7, 1973 a Task Force undercover officer purchased Exhibit #1, 34.39 grams (net weight) of cocaine, 42.6 % purity from defendant VELEZ, at which time VELEZ removed Exhibit #1 from a plastic bag which contained several ounces of alleged cocaine, of same purity.

61. AGENT'S NAME (Print or Type) Dennis E. Checkoway		62. AGENT'S SIGNATURE <i>Dennis E. Checkoway</i>		63. DATE 3/12/75	
64. SUPERVISOR'S NAME (Print or Type) Joseph Keefe		65. SUPERVISOR'S SIGNATURE <i>Joseph Keefe</i>		66. DATE 3/12/75	
FINAL APPROVAL					
67. REVIEWED BY ✓		68. CONCURRENCE <input type="checkbox"/> Yes <input type="checkbox"/> No		69. DATE	
70. RESPONSIBLE REGION		71. RESPONSIBLE OFFICE			
72. REPORT FORWARDED TO		73. REPORT FORWARDED BY			
74. REMARKS:					



## AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 27th day of September 19 76 he served <sup>two copies</sup> ~~a copy~~ of the within Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Irving Katcher, Esq.

38 Park Row

New York, N. Y. 10038

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, <sup>225 Cadman Plaza East</sup> ~~Eastern District of New York~~, Borough of Brooklyn, County of Kings, City of New York.

Sworn to before me this

27th day of September 19 76

LYDIA FERNANDEZ

NOTARY

CAROLYN N. JOHNSON

New York

No. 11-11-76

Qualified in Queens County

Term Expires March 30, 1977